

Exhibit 146

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 MASTER DOCKET 18-MD-2865 (LAK)
4 CASE NO. 18-CV-09797

5 IN RE:
6 CUSTOMS AND TAX ADMINISTRATION OF
7 THE KINGDOM OF DENMARK
8 (SKATTEFORVALTNINGEN) TAX REFUND
9 SCHEME LITIGATION

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14 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
15 EXAMINATION OF
16 PETER WELLS

17 DATE: May 27, 2021

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25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 A I recall that Michael Ben-Jacob was
2 the partner in charge of the project, and
3 that he had -- and that there had been
4 discussions that I do recall him being
5 involved in about beneficial ownership.

6 Q And what do you recall generally
7 about the discussions with Mr. Ben-Jacob as
8 to whether the plan could accurately
9 represent that it was the beneficial owner?

10 A I recall that it was an issue that
11 was being actively discussed.

12 Q And do you recall the conclusion to
13 that discussion?

14 A I don't recall specifically the
15 conclusion to that discussion.

16 Q Do you recall generally what the
17 conclusion of that discussion was?

18 A My recollection is generally the
19 conclusion was that -- that there was comfort
20 making that -- making that representation.

21 Q Do you recall what the basis for
22 that conclusion was?

23 A I do not recall.

24 Q And do you recall what the comfort
25 was for the basis for making that

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1 A I don't recall.

2 Q If you turn to Exhibit 3108?

3 MR. MAGUIRE: Mark this as 3108.

4 (Whereupon the above mentioned was
5 marked for Identification.)

6 Q Is this an e-mail you received from
7 Adam LaRosa on or about May 11 of 2013?

8 A Yes, this looks like an e-mail from
9 Adam LaRosa to me on Saturday, May 11, 2013.

10 Q The subject is "FBAR Reporting."
11 What is that?

12 A FBAR is a Treasury reporting form.

13 Q And did Kaye Scholer perform
14 services for the Argre group in connection
15 with FBAR reporting?

16 MR. DEWEY: Objection.

17 A Kaye Scholer generally provided
18 advice to clients about FBAR reporting.
19 Argre Management was one of the clients that
20 we -- that I recalled providing FBAR advice
21 to from time to time.

22 Q In the e-mail, it says, "Peter, in
23 addition to the other e-mail I sent just now,
24 here is an example of an account that
25 actually did have cash in it."

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1 excuse me.

2 It may have been the case that
3 FBARs were -- the thresholds for FBAR filings
4 may not have been met. And so we were
5 providing a statement indicating that even if
6 it didn't technically meet the definition of
7 the threshold filings, we were filing anyway.

8 Q So when you say "the threshold,"
9 there's -- the FBAR had a -- had sort of a
10 minimum amount that you had to have in your
11 account before you were required to submit an
12 FBAR.

13 Is that right?

14 A Among other things, yes.

15 Q And if the value of the account was
16 below that threshold, then there was no
17 requirement to file?

18 A That is one of the requirements,
19 yes.

20 Q And the purpose of this statement
21 was to explain that you were filing anyway
22 even though the value of the account was
23 below the -- that minimum threshold?

24 A That's correct.

25 Q If you could turn to Exhibit 2240?

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1 coming up with names for the entities.

2 Q If you turn to Exhibit 2188, is
3 this an e-mail --

4 A Yeah.

5 Q -- that you received from Mr. Van
6 Merkensteijn around June 19, 2014?

7 A Yes, it appears to be an e-mail
8 from John Van Merkensteijn June 19, 2014.

9 Q If you go to the last page of the
10 exhibit, you'll see Mr. Van Merkensteijn
11 e-mails Amy Gregory.

12 A (Witness reviewing.)

13 I see that e-mail, yes.

14 Q Who is Amy Gregory?

15 A She was a paralegal at
16 Kaye Scholer.

17 Q Mr. Van Merkensteijn says, "Amy, I
18 think we left you with the task of coming up
19 with 30 dissimilar random names for LLC and
20 plans."

21 Do you see that?

22 A I do.

23 Q And then you respond on the prior
24 page.

25 Do you see that?

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1 A I do.

2 Q You say, "John, as discussed, here
3 is our stab at 30 names for the LLCs," and
4 you list 30 names.

5 Right?

6 A That's correct.

7 Q And who came up with those names?

8 A My recollection is that I came up
9 with a number of the names.

10 Q Okay. Who came up with the rest of
11 the names?

12 A I don't recall.

13 Q Did you come up with all of the
14 names?

15 A I don't recall.

16 Q How did you come up with the names?

17 A I don't recall specifically how I
18 came up with the names, other than just
19 thinking of them.

20 Q Was the process random?

21 MR. DEWEY: Objection.

22 A I don't know what you mean by
23 "random."

24 Q Well, you see, Mr. Van Merkenstein
25 referred to "coming up with 30 dissimilar

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1 Q Do you recall that SKAT paid the
2 reclaim agents, and then Acupay or Goal would
3 send the money on to the plan?

4 A I don't recall that.

5 Q Mr. Markowitz goes on to say, "The
6 savings account is solely for the plan, and
7 that's where its share of the profit goes."

8 Do you see that?

9 A I do.

10 Q So did you understand that each
11 plan had a trading account as nominee or
12 agent for the partnership and a checking
13 account as nominee or agent for the
14 partnership?

15 MR. DEWEY: Objection.

16 A I don't recall what I understood.

17 Q If you could turn, sir, to
18 Exhibit 3115?

19 MR. MAGUIRE: Mark this as 3115.

20 (Whereupon the above mentioned was
21 marked for Identification.)

22 Q Is this an e-mail that you sent on
23 or about July 25, 2014?

24 A It appears to be an e-mail I sent
25 to Richard Markowitz on July 25, 2014.

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1 Q You'll see the subject is
2 "Brokerage Services with Ballygate."

3 What was Ballygate?

4 A I don't recall.

5 Q You say, "Richard, we have
6 completed the draft Ballygate questionnaires
7 for all the plans. Attached is a sample for
8 Cavus for your review."

9 What was Cavus?

10 A I believe Cavus was an LLC and
11 plan.

12 Q You say, "Obviously, the
13 substantive questions were mirrored on the
14 Solo OPL."

15 Is "OPL" Old Park Lane?

16 A I believe that is correct.

17 Q And then attached we have the
18 "Ballygate Capital, Limited, Institutional
19 Customer, New Account" form.

20 Right?

21 A Correct.

22 Q And were all these new customers,
23 all the plans, were they signed up as
24 institutional customers?

25 A I don't recall.

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1 Q And you'll see Section A is the
2 Cavus Systems LLC Roth 401(k) Plan as the
3 customer?

4 A That's what the form says, yes.

5 Q And that's the -- that was the
6 plan.

7 Right?

8 A That's what the form says, yes,
9 correct.

10 Q So the plan was opening a customer
11 account with Ballygate, the broker.

12 Right?

13 A I don't recall the specifics.

14 Q But you see that this customer here
15 is Cavus Systems plan.

16 Right?

17 A The form says they are the
18 customer, correct.

19 Q And down at the bottom of this
20 page, it has the "Place of Business Address."

21 Right?

22 A Correct.

23 Q And the address is care of Cavus
24 Systems LLC, 425 Park Avenue.

25 What address is that?

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1 A That was Kaye Scholer's address.

2 Q And was Kaye Scholer's address used
3 for all of these plans?

4 A I don't recall if it was or wasn't.

5 Q Why was Kaye Scholer's address
6 used?

7 A I think for administrative
8 assistance, administrative use.

9 Q And then, how did Kaye Scholer
10 handle the mail to the plans at its office
11 address?

12 A I don't recall.

13 Q Did you get the mail? Was it
14 routed to you?

15 A I don't recall.

16 Q Do you know who had access to the
17 mail for the plans that came in to
18 Kaye Scholer's offices?

19 A I don't recall knowing one way or
20 the other.

21 Q Now, if you turn to the page that's
22 Bates numbered 676, you'll see there's a box
23 around the middle of the page that says
24 "Source of Funds for Investments or Trading?"

25 It says, "Any contributions made by

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1 specific line of questioning?

2 Q Generally.

3 A I don't recall if I prepared any
4 letters or forms of letters for them.

5 Q What about the letter -- the last
6 letter, the RAK Investment Trust letter?

7 Do you have any recollection of having any
8 role in preparing that?

9 A I don't have any recollection
10 either way.

11 Q If you could turn to Exhibit 3123?

12 MR. MAGUIRE: Mark this as 3123.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 A Okay.

16 Q Is this an e-mail you received from
17 Mr. Markowitz on or about June 22?

18 A (Witness reviewing.)

19 Yes, it appears to be a letter from
20 Routt Pension.com from June 22, 2015.

21 Q And that's from Mr. Markowitz, is
22 your understanding.

23 Right?

24 A I believe so, yes.

25 Q And the subject is "Form SLT

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1 Holdings?"

2 A That's correct. That's what the
3 subject is.

4 Q What is -- what does that refer to?

5 A Form SLT was one of the Treasury
6 forms.

7 Q And did you prepare any of those
8 forms?

9 A My recollection is I worked
10 with -- in conjunction with others to prepare
11 those forms.

12 Q And who are the people that you
13 worked in conjunction with?

14 A So my recollection is, among
15 others, it would have been the principals and
16 employees of Argre, as well as Michael
17 Ben-Jacob, and some other associates at
18 Kaye Scholer.

19 Q And after the establishment of
20 Maple Point and before you left Kaye Scholer
21 to go to -- to become employed at Maple Point
22 during that period of time when you were
23 still at Kaye Scholer, did you work on
24 any -- filing any forms with the Fed or the
25 Treasury?

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1 MR. DEWEY: I'm sorry. Can you --

2 A That confused me. Can you give
3 that to me again, please?

4 Q Yeah, just in terms of time frame,
5 I'm asking you about the time when you were
6 at Kaye Scholer.

7 A Yeah.

8 Q But at some point while you were
9 still at Kaye Scholer, Maple Point was being
10 set up.

11 Correct?

12 A That is correct.

13 Q Now, you joined and became employed
14 by Maple Point after it had already been
15 operating for a while?

16 A That's correct.

17 Q So during the time that you were at
18 Kaye Scholer, did you work with anyone at
19 Maple Point in connection with any Fed or
20 Treasury forms or filings?

21 A I don't recall.

22 Q During the time you were at
23 Kaye Scholer, during this time -- we're
24 looking at Exhibit 3123 -- did you understand
25 that you needed this information from

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1 Mr. Markowitz in order to prepare the
2 Form SLT holdings?

3 THE WITNESS: I didn't catch the
4 end of his question.

5 Q Let me start over.

6 A Sure.

7 Q Did you understand Mr. Markowitz
8 was providing this information in
9 Exhibit 3123 so you could prepare the
10 Form SLT?

11 A I don't recall what I -- what my
12 understanding was at the time. But
13 certainly, the information, I -- we needed
14 the information provided to us from the
15 clients in order to prepare the Form SLT.

16 Q And if you turn to Exhibit 3122?

17 MR. MAGUIRE: Mark this as 3122.

18 (Whereupon the above mentioned was
19 marked for Identification.)

20 Q This is a Form SLT for the Avanix
21 Management LLC Roth 401(K) Plan?

22 A Yes, that appears to be the case.

23 Q And is this for the date as of
24 May 29, 2015?

25 A Yes, that's what it appears to say.